(1888) 22 Neb. 717, 36 N. W. 155. (2) That there must be apparent cause and good faith on the part of the vendor. *Sills* v. *Hawes* (1899) 14 Colo. App. 157, 59 Pac. 422; *Oppenheimer* v. *Moore* (1905) 107 App. Div. 301, 95 N. Y. Supp. 138; *Truman* v. *Threshing Machine Co.* (1912) 169 Mich. 153, 135 N. W. 89. Here the question of good faith is for the jury. (3) That the vendor deemed himself insecure. *Thorp* v. *Fleming* (1908) 78 Kan. 237, 96 Pac. 470; see *Koster* v. *Seney* (1897) 100 Iowa 558, 69 N. W. 868. Here the question of good faith may not be inquired into, and the vendor may therefore act arbitrarily. The first of these views does not appear to give the vendor all that he contracted for, whereas the third appears to be unnecessarily harsh on the vendee. The second view most nearly approximates what is fairest to the interests of both parties.

SALES—RISK OF LOSS—GOODS "SHIPPED TO ORDER NOTIFY."—The plaintiff sold a quantity of lime to the defendant, f. o. b. a vessel to be supplied by the buyer at the seller's place. The seller shipped the lime "to order notify" defendant, and attaching the bill of lading in the seller's name to a sight draft, sent them through a bank for collection. The goods were lost in transit, and the vendor sued for the price. *Held,* the seller retained title by the bill of lading for his protection until payment of the draft. Risk follows the title and is on the seller. *Penniman* v. *Winder* (N. C. 1920) 103 S. E. 908.

The title in the goods would have passed to the buyer on shipment but for the bill of lading. Sales Act §19, rule 4, subd. 2; *Fragano* v. *Long* (1825) 4 B. & C. 219. Where goods shipped are by the bill of lading deliverable to the seller, or order, the seller thereby reserves the property. But if, except for the form of the bill of lading the property would have passed to the buyer on shipment, under the Sales Act the seller's property is held to be only for the purpose of securing performance, and the risk is on the buyer from the time of delivery to the carrier. Sales Act §20, subd. 2; §22, subd. a. *Alderman Bros.* v. *Westinghouse Air Brake Co.* (1918) 92 Conn. 419, 103 Atl 267; *Kinney* v. *Horowitz* (Md. 1919) 105 Atl. 438. North Carolina has not adopted the Sales Act, but the same result has been reached at common law. *Browne* v. *Hare* (1858) 3 H. & N. *484. A few holdings support the principal case. *William Mercantile Co.* v. *Fussy* (1895) 15 Mont. 511, 39 Pac. 738; *Cragun Bros.* v. *Todd & Kraft* (1906) 131 Iowa 250, 108 N. W. 450. These cases fail to distinguish between the retention of possession (called title by the courts) for the purpose of security only, and the reservation of full ownership. In the former, the risk is on the buyer. Williston, *Sales* (1909) 419, 463. The seller retains a right to possession and a power of disposal; but some of the elements of title, which is an aggregate, not an indivisible mass, are in the buyer. In North Carolina the risk was held to be on the buyer in a conditional sale where the seller retained title for the purpose of securing himself. *Whitlock* v. *Auburn Lumber Co.* (1907) 145 N. C. 568, 58 S. E. 909. It is difficult to see how the court in the principal case can reconcile these two holdings, since the position of the vendor is analogous in both cases.

SALES—TRANSFER OF TITLE—UNDERPAYMENT DUE TO MISTAKE.—The plaintiff sold the defendant fifty bales of cotton for cash, but due to a mutual error in adding the weights of the bales, payment was made by draft for ten thousand pounds less than was actually delivered. On the defendant's refusal to pay the balance of the price on the basis of correct addition of weights, the plaintiff brought trover for the ten thousand pounds. The court *held,* title passed to the defendant on the delivery of the cotton, suggesting that contract was the proper action. *King* v. *Adams* (C. C. A. 8th Cir. 1920) 265 Fed. 9.

Ordinarily in a cash sale, title does not pass until payment. However, an un-

restricted delivery waives this condition unless a contrary intention appears. See *In re Perpall* (C. C. A. 1919) 256 Fed. 758, 760; *People* v. *Mills Sing* (Cal. 1919) 183 Pac. 865, 867. But here no such "contrary intention" appears. Since the parties agreed upon the price per pound and the number of bales, the mistake in payment was merely in the performance of the contract. Therefore, title passed on the delivery of the goods and the receipt of the draft. The *dictum* of the court that the appropriate remedy was contract is sound. Where the vendor through a mistake in computation offers his goods at a certain lump sum, he is held to that figure, *Tatum* v. *Coast Lumber Co.* (1909) 16 Ida. 471, 101 Pac. 957; *Griffin* v. *O'Neill* (1892) 48 Kan. 117, 29 Pac. 143, unless the vendee knew or should have known of the error when he accepted. *Adkins & Co.* v. *Campbell* (22 Del. 1906) 6 Penn. 96, 64 Atl. 628. But where the vendor has performed and the mistake is merely in the computation of the total due under the agreement, he may recover the unpaid balance. *Union Electric Light Co.* v. *Surgical Supply Co.* (1907) 122 Mo. App. 631, 99 S. W. 804; *Alleghany County* v. *Thoma* (1906) 31 Pa. Super. Ct. 102. In the principal case, since the price per pound was evidently agreed upon and the vendee should have known of the mistake in computation, the vendor can recover the balance of the correct contract price. The defendant contracted to pay for fifty bales at a certain price per pound and is bound to do so. *Cf. Union L. Co.* v. *J. W. Schonten & Co.* (1919) 25 Cal. App. 80, 142 Pac. 910.

SPECIFIC PERFORMANCE—WANT OF MUTUALTY—NEW YORK RULE.—A landlord orally agreed with his tenants that if they should make certain extensive improvements in the property, he would give them an option to extend the lease for five years, and would reduce the agreement to writing. The tenants made the improvements, and now bring a bill to compel the landlord to execute the written agreement. *Held,* the tenants are entitled to specific performance. *Stone* v. 434 *Broadway Corp.* (Sup. Ct. Special Term, 1920) 184 N. Y. Supp. 116.

Specific performance of affirmative obligations is properly refused where the court is unable to enforce complete performance of the contract. *Wakeham* v. *Barker* (1889) 82 Cal. 46, 22 Pac. 1131 (personal service); *Flight* v. *Bolland* (1828) 4 Russell 299 (infancy); (1917) 17 COLUMBIA LAW REV. 549. The defendant should not be compelled to perform where he is left without remedy or with only an action at law, in case of breach by the plaintiff. (1903) 3 COLUMBIA LAW REV. 1; (1916) 16 COLUMBIA LAW REV. 442, 445. The defect in the plaintiff's bill may be termed "want of mutuality of performance." The New York courts have extended this doctrine to cases where the court has the power to compel complete performance, but the defendant could not have filed a bill to compel the plaintiff to perform. 328 *East 26th Street Realty Co.* v. *Kahn* (Sup. Ct. 1920) 184 N. Y. Supp. 95; *Schuyler* v. *Kirk-Brown Realty Co.* (1920) 184 N. Y. Supp. 95; *Wadick* v. *Mace* (1908) 191 N. Y. 1, 83 N. E. 571. The alleged defect here may be termed "want of mutuality of obligations." The courts failed to realize that the plaintiff by coming into court has waived his immunity, so that the court may now compel him to perform. In the principal case, however, the plaintiff has already performed, and even in New York this is held to entitle him to specific performance. *Brune* v. *Von Lehn* (1920) 112 Misc. 342, 183 N. Y. Supp. 360; *McKinley* v. *Hessen* (1911) 202 N. Y. 24, 95 N. E. 32. The performance must be substantial, and in direct execution of the agreement. See *McKinley* v. *Hessen, supra; Wheeler* v. *Reynolds* (1876) 66 N. Y. 227, 231. The courts do not discuss mutuality, but base their decision upon the ground that where the defendant has stood by and permitted the plaintiff to perform, it would be inequitable to allow him to avoid performance on his own part. See *Woolley* v. *Stewart* (1918) 222 N. Y. 347, 351, 118 N. E. 847, 848. The New York courts are correct in granting specific performance where the plain-